IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 354 OF 2001.

Smt. Myra Costa Bir,
r/o Dignem, Verna,
Salcete Goa. ... Petitioner.

Versus

1. State of Goa through
   Chief Secretary,
   Secretariat, Panaji, Goa.
2. The Dy. Director of Panchayats,
   South Goa District,
   Communidade Building, Margao,
   Goa.
3. Block Development Officer,
   Mormugao Block with Office at
   Vasco-da-Gama, Goa.
4. The Sarpanch,
   Village Panchayat of Verna,
   Salcete Goa.
5. Shri Joaquim Remedios Mattos,
   r/o H. No. 65, Digne,
   Verna, Salcete Goa. ... Respondents.

Mr. S.S. Kantak, Advocate for the Petitioner.

Ms. W. Coutinho, Government Advocate for the
Respondents 1 to 3.

Mr. S.M. Usgaonkar, Advocate for the Respondent No. 4.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe,
Advocate for the Respondent No. 5.

Coram: C.K. THAKKER, C.J. &
P.V. HARDAS, J.

Date: 1st April 2002.

ORAL JUDGMENT (PER THAKKER, C.J.)

Rule. Counsel for the respondents 1 to 3 appears and waives notice of rule on behalf of respondents 1 to 3. Counsel for respondent no. 4 Panchayat appears and waives notice of rule on behalf of respondent no. 4. Counsel for respondent no. 5

appears and waives notice of rule on behalf of respondent no. 5. In the facts and circumstances, the matter is taken for final hearing.

2. This petition is filed by the petitioner for appropriate directions to the respondents 2 to 4 to take action against the illegal constructions carried out by the respondent no. 5. The case of the petitioner in this Court is that the respondent no. 5, who resides in the house in the petitioner's property and claims himself to be a mundcar in respect of the same house has committed unauthorised encroachment and has also caused nuisance, which has compelled the petitioner to approach this Court as neither respondents 1 to 3 nor respondent no. 4 has taken action.

3. It appears that notice was issued earlier and the respondents were directed to submit their report. The report was submitted. It is, however, not stated in the report as to how the construction was carried out and as to whether it is in compliance with the Act. In these circumstances the respondent no. 3 has filed an affidavit dated 30th March, 2002 wherein it was stated that pursuant to the Order passed by this Court on 18th February, 2002, the Government Surveyor had gone to the inspection site of the disputed house.

For the purpose of submission of fresh report, he, namely Uttam K.P. Pal, was accompanied by Mr. A.V. Matondkar, field surveyor of the Department of Settlement and Land Records and in the presence of the Sarpanch, Secretary Clerk together with respondent no. 5 carried out the inspection on 22nd March, 2002.

4. In paragraph 3, the deponent stated as under:-

> "I say that the report clearly shows there is an extra construction of 88 sq. mts. which is done beyond the earlier existing plinth area (i.e. 73 sq. mts.). I say that the existing house on the cadastral map and survey plan shows an area of 73 sq. mts. Hence, I say that the respondent no. 5 has increased an area of 88 sq. mts. The total structure including the extra construction reached to 161 sq. mts. as on date 22/3/2002."

Looking to the above affidavit, it is clear that as per the say of the respondent no. 3, there was an encroachment. The learned counsel for the respondent has fully relied on the report to state that the encroachment is proved.

5. Our attention was also invited by the counsel for the petitioner to a communication stated to have been addressed to the Sarpanch, Village Panchayat of Verna, respondent no. 4 herein, on 8th August 1996 stating therein that because of the act by respondent

no. 5, nuisance has been created and the pig latrine was required to be converted to a sanitary latrine. Reliance was placed by the counsel for the petitioner on the decision of this Court in **Nazar da Silva and another v. State of Goa and others,** 2000 (2) Goa L.T. 168 wherein certain directions were issued to the Panchayat to discharge the statutory duties in accordance with Section 66 of the Goa Panchayat Raj Act, 1994, (hereinafter referred to as 'the Act'). It was, therefore, submitted that appropriate directions be issued to respondents 1 to 3 and 4 to carry out the statutory duties in accordance with the Act.

6. Learned counsel for the contesting respondent no. 5 submitted that he was a mundcar and the said status has been accepted and is no more in controversy. The land to be given was also demarcated and to that extent there is no dispute.

7. If in the light of the above facts, appropriate directions are issued, respondent no. 5 cannot have objection. Only thing in the light of the above position that can be done by issuing directions to the authorities to perform their statutory duties. Having heard learned counsel for the parties, in our opinion, the petition deserves to be disposed of by directing the respondents 1 to 3 and respondent no. 4

to discharge their statutory duties. If the respondent no. 5 is entitled and declared as mundcar that illegal encroachment cannot be ignored and even in such case the respondents to discharge their duties according to law and particularly respondent no. 4 in accordance with the Act.

8. For the aforesaid reasons, the petition deserves to be partly allowed and the respondents 1 to 4 are directed to discharge their duties according to law. We may, however, state that we do not express any opinion on the petition. Accordingly, the petition is disposed of. Rule made accordingly in the above terms.

(C.K. THAKKER)
CHIEF JUSTICE.

(P.V. HARDAS)
JUDGE.

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